IN THE HIGH COURT OF JUDICATURE AT BOMBAY

T & I. J.

NOTICE OF MOTION NO.2 OF 2005
IN
PETITION NO.172 OF 2004

Kalpana Dilip Dave .. Petitioner

Vs.

Smt.Pista @ Premila C.Dave & Ors. .. Respondents

Mr.K.R.Trivedi for the petitioner

Mr.S.M.Khaire for the respondents

CORAM : S.U.KAMDAR, J

DATED : 12TH AUGUST, 2005

P.C.:

1. The present Notice of Motion has been taken out by the petitioner who is the wife of the deceased. Respondent no.1 is the mother of the deceased. Respondent no.2 to 41 are the various companies with which deceased had certain deposits and the bank accounts with the said banks. The deceased died leaving behind a flat bearing no.602-B, Priti Sagar, Near Yogi Nagar, Link Road, Borivali (West), Mumbai 400 092. There is another premises in which also according to the petitioner

deceased had a right being premises at Tulsi Vrinda Chawl, 2nd Floor, Babai Naka, L.T.Road, Borivali (West), Mumbai 400 092. It is the case of the petitioner that she was residing in the flat with the deceased at 602-B, Priti Sagar, Near Yogi Nagar, Link Road, Borivali (West), Mumbai-92 and after the death of the deceased, she was thrown out of the premises by the respondent no.1 herein. It is an admitted position before me that respondent no.1 is in possession of the premises and residing with the the family. Daughter of the petitioner is also residing with respondent no.1. It is also an admitted position before me that the premises at Tulsa Vrinda Chawl, 2nd Floor, Babai Naka, L.T.Road, Borivali (West), Mumbai - 92 is the premises lying vacant and the same is locked. At present the petitioner has no place of residence and she is residing with her parents.

2. The learned counsel for the respondent no.1 states that he is not willing that in either of the premises petitioner must be permitted to reside. He states that the said flat belongs to deceased. Respondent no.1 is also entitled to the share. He

also relies upon the proceeding being suit no.2403 of 2002 and contends that the petitioner herein has admitted in the said proceedings that the petitioner has only 1/3rd share and respondent no.1 and daughter of the petitioner has another 1/3rd share each. It is his case that in view thereof, petitioner is not entitled to reside in the said premises but the respondent is entitled to be in possession thereof.

3. I put it to the learned counsel for the respondent that whether respondent no.1 will permit the petitioner to occupy another premises which is lying vacant since she has no other premises to reside and she is residing with her father. But on instructions the learned counsel has made a statement that respondent no.1 is not willing to permit the petitioner to reside in either of the premises. In my opinion, in the interest of justice, it is necessary that the petitioner be provided with accommodation particularly when one of the premises is lying vacant and locked. In the aforesaid circumstances, without disturbing the possession of respondent no. 1 herein, I pass the

following order:

4. Court Receiver, High Court, Mumbai is appointed as Receiver in respect of both the premises being Flat No.602-B, Priti Sagar, Near Yogi Nagar, Link Road, Borivali (West), Mumbai 400 092 and Tulsi Vrinda Chawl, 2nd Floor, Babai Naka, L.T.Road, Borivali (West), Mumbai 400 092. Court Receiver will appoint respondent no.1 as an agent in respect of Flat No.602-B, Priti Sagar, Near Yogi Nagar, Link Road, Borivali (West), Mumbai and put the petitioner in possession of the premises situated at Tulsi Vrinda Chawl, 2nd Floor, Babai Naka, L.T.Road, Borivali (West), Mumbai 92 and appoint her as an agent in respect of the said premises. Both the parties will be entitled to use, occupy and possess the same as an agent of the Court Receiver. However, Court Receiver will not claim any amount towards security and royalty. In so far as fixed deposit and other dues of the deceased are concerned with various companies and banks as set out in the affidavit in support of the motion, each of the banks and companies being respondent no.2 to 41 are directed to deposit the

dues or investment of the said deceased lying with them with the Prothonotary and Senior Master, High Court, Mumbai within 4 weeks from today. On such deposit being made, Prothonotary and Senior Master, High Court, Mumbai shall invest the same in Fixed Deposit with Nationalised Bank initially for one year and renew the same from time to time alongwith accrued interest thereon till further orders from this court. It is also made clear that Darshan Securities P.Ltd. also deposit all outstanding dues of the said deceased with the Prothonotary and Senior Master, High Court, Mumbai within 4 weeks from today and the same also will be invested as directed hereinabove. With the aforesaid order, Notice of Motion is disposed of accordingly. No order as to costs.